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GEMINI INSURANCE COMPANY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BOB HALLAM and LINDA HALLAM,
Plaintiff,
v.
GEMINI INSURANCE COMPANY,
Defendant.

CASE NO. 12-CV-2442-CAB-BLM

GEMINI INSURANCE COMPANY'S
THIRD PARTY COMPLAINT

GEMINI INSURANCE COMPANY

Third Party Plaintiff

V.

AMERICAN SAFETY INDEMNITY
COMPANY; LEXINGTON
INSURANCE COMPANY; NORTH
AMERICAN CAPACITY; FIRST
SPECIALTY INSURANCE
COMPANY; BURLINGTON
INSURANCE COMPANY; CERTAIN
UNDERWRITERS AT LLOYD'S

1 LONDON; LINCOLN GENERAL
2 INSURANCE COMPANY;
3 NAVIGATORS INSURANCE
4 COMPANY; SAFECO INSURANCE
5 COMPANY OF AMERICA;
6 HADDENN CONSTRUCTION;
7 HADDENN CONSTRUCTION, LLC;
8 HADDENN DEVELOPMENT;
9 HADDENN DEVELOPMENT, INC.;
10 HADDENN CONSULTING;
11 HADDENN CONSTRUCTION AND
12 CONSULTING; HADDENN
13 DEVELOPMENT, LLC; and MARIA
14 JOHNSON
15

16 Comes Now Defendant and Third Party Plaintiff Gemini Insurance Company
17 ("Gemini") and hereby submits this Third Party Complaint pursuant to Federal Rule of
18 Civil Procedure, Rule 14, as follows:

19 **THE PARTIES**

20 1. Gemini was at all times herein mentioned, and currently is, a corporation
21 organized and existing under the laws of the State of Delaware, and duly authorized to
22 transact business in the State of California.

23 2. Gemini is informed and believes, and based thereon alleges, that third party
24 defendant American Safety Indemnity Company ("American Safety") is an Oklahoma
25 corporation who was at all times herein mentioned duly authorized to transact insurance
26 business in the State of California.

27 3. Gemini is informed and believes, and based thereon alleges, that third party
28 defendant Lexington Insurance Company ("Lexington") is a Delaware corporation and was
at all times herein mentioned duly authorized to transact insurance business in the State of
California.
29
30

1 4. Gemini is informed and believes, and based thereon alleges, that third party
2 defendant North American Capacity ("NAC") is a New Hampshire corporation who was at
3 all times herein mentioned duly authorized to transact insurance business in the State of
4 California.

5 5. Gemini is informed and believes, and based thereon alleges, that third party
6 defendant First Specialty Insurance Company ("First Specialty") is a Missouri corporation
7 who was at all times herein mentioned duly authorized to transact insurance business in the
8 State of California.

9 6. Gemini is informed and believes, and based thereon alleges, that third party
10 defendant Burlington Insurance Company ("Burlington") is a North Carolina corporation
11 who was at all times herein mentioned duly authorized to transact insurance business in the
12 State of California.

13 7. Gemini is informed and believes, and based thereon alleges, that third party
14 defendant Certain Underwriters at Lloyd's London, ("Underwriters"), is a group of
15 underwriters located in London, England who was at all times herein mentioned duly
16 authorized to transact insurance business in the State of California.

17 8. Gemini is informed and believes, and based thereon alleges, that third party
18 defendant Lincoln General Insurance Company ("Lincoln General") is a Pennsylvania
19 corporation who was at all times herein mentioned duly authorized to transact insurance
20 business in the State of California.

21 9. Gemini is informed and believes, and based thereon alleges, that third party
22 defendant Navigators Insurance Company ("Navigators") is a New York corporation who
23 was at all times herein mentioned duly authorized to transact insurance business in the
24 State of California.

25 10. Gemini is informed and believes, and based thereon alleges, that third party
26 defendant Safeco Insurance Company of America ("Safeco") is a Massachusetts

1 corporation who was at all times herein mentioned duly authorized to transact insurance
2 business in the State of California.

3 11. Gemini is informed and believes, and based thereon alleges, that third party
4 defendant Haddenn Construction, form of business unknown, was at all times herein
5 mentioned duly authorized to conduct business in the State of California.

6 12. Gemini is informed and believes, and based thereon alleges, that third party
7 defendant Haddenn Construction, LLC, form of business unknown, was at all times herein
8 mentioned duly authorized to conduct business in the State of California.

9 13. Gemini is informed and believes, and based thereon alleges, that third party
10 defendant Haddenn Development, form of business unknown, was at all times herein
11 mentioned duly authorized to conduct business in the State of California.

12 14. Gemini is informed and believes, and based thereon alleges, that third party
13 defendant Haddenn Development, Inc. is a California corporation who was at all times
14 herein mentioned duly authorized to conduct business in the State of California.

15 15. Gemini is informed and believes, and based thereon alleges, that third party
16 defendant Haddenn Consulting, form of business unknown, was at all times herein
17 mentioned duly authorized to conduct business in the State of California.

18 16. Gemini is informed and believes, and based thereon alleges, that third party
19 defendant Haddenn Construction and Consulting, form of business unknown, was at all
20 times herein mentioned duly authorized to conduct business in the State of California.

21 17. Gemini is informed and believes, and based thereon alleges, that third party
22 defendant Haddenn Development, LLC is a California limited liability company who was
23 at all times herein mentioned duly authorized to conduct business in the State of
24 California.

25 18. Gemini is informed and believes, and based thereon alleges, that third party
26 defendant Maria Johnson is an individual residing in the County of San Diego, State of
27 California.

19. Gemini alleges that the true names and capacities, whether individual, corporate, associate or otherwise, of the third party defendants named herein as Roes 1 through 20 are unknown to Gemini, who therefore sues said third party defendants by such fictitious names. Gemini will seek leave to amend this third party complaint to show the third party defendants' true names and capacities when the same have been ascertained. Gemini is informed and believes, and thereon alleges, that Roes 1 through 20 are in some manner legally responsible for the claims and liabilities alleged in this Third Party Complaint.

20. Gemini may hereinafter collectively refer to American Safety, Lexington, NAC, First Specialty, Burlington, Underwriters, Lincoln General, Navigators, Safeco, Haddenn Construction, Haddenn Construction, LLC, Haddenn Development, Haddenn Development, Inc., Haddenn Consulting, Haddenn Construction and Consulting, Haddenn Development, LLC, Maria Johnson, and Roes 1 through 20, collectively, as the "Third Party Defendants."

JURISDICTION AND VENUE

21. This Court has original jurisdiction over this matter under 28 U.S.C. § 1332, as the plaintiffs Bob Hallam and Linda Hallam (hereinafter "Plaintiffs") filed suit against defendant Gemini, and Plaintiffs and Gemini are citizens of different states, and the amount in controversy between them in the present action exceeds seventy-five thousand dollars (\$75,000), exclusive of costs and interest.

22. This Court has supplemental jurisdiction under 28 U.S.C. § 1337(a) over Gemini's Third Party Complaint against each of the Third Party Defendants herein in that Gemini's claims against each of the Third Party Defendants are supplemental to Plaintiffs' claims against Gemini, and each of the Third Party Defendants is or may be liable to Gemini for all or a portion of the amounts being sought by Plaintiffs from Gemini.

23. Venue is proper in the United States District Court, Southern District of California, in that all of the Third Party Defendants are subject to personal jurisdiction in

1 this District at the time the action is commenced, and as there is no District in which the
2 action may otherwise be brought. The subject matter of this action, and Gemini's Third
3 Party Complaint, relate to the obligations owed by Gemini and the Third Party Defendants
4 regarding an underlying construction defect action styled *Hallam, et al. v. Johnson, et al.*
5 (San Diego Superior Court Case No. 37-2007-00066841-CU-CD-CTL ("Underlying
6 Action"), which was litigated within this District. In addition, the residence in question is
7 located at 8213 Run of the Knolls, San Diego, County of San Diego, California, and
8 therefore located in this District.

9 **FACTUAL BACKGROUND**

10 24. San Diego County Recorder records show that, on December 19, 2002,
11 Maria Balasubramanian (aka Maria Johnson) and Terry Johnson filed a fictitious business
12 name statement noting that they would use the fictitious business name "Haddenn
13 Development."

14 25. California Contractor's State License Board ("CSLB") records show that, on
15 October 16, 2003, Terry Johnson obtained general contractor's license no. 826071 as a sole
16 proprietor using the business name "Johnson Development Services."

17 26. California Secretary of State records show that Haddenn Development, LLC
18 was formed on October 22, 2003.

19 27. San Diego County Recorder records show that, on April 2, 2004, Haddenn
20 Development, LLC filed a fictitious business name statement noting that Haddenn
21 Development, LLC would use the fictitious business name "Haddenn Construction."

22 28. On April 1, 2014, an Independent Contractor Agreement was entered into as
23 between Dimension One Spas (a business owned by the Plaintiffs) on the one hand and
24 "Haddenn Consulting" on the other hand.

25 29. Plaintiffs entered into a written contract on October 17, 2004 with "Haddenn
26 Construction" to build their home. Therefore, Gemini is informed and believes the written
27 contract to build plaintiffs' home was entered into by Haddenn Development, LLC using
28

1 the fictitious business name "Haddenn Construction."

2 30. Construction of Plaintiffs' home began in late October or early November of
3 2004. According to the contract, the work was to be "substantially complete within 15
4 months after the commencement of work."

5 31. On or about December 1, 2004, Haddenn Construction, LLC entered into a
6 Subcontractor Agreement ("the Gonzales Subcontract Agreement") with Fred Gonzales
7 Concrete, Inc. to perform concrete work at Plaintiffs' home.

8 32. Pursuant to paragraph 5 of the Gonzales Subcontract Agreement:

9 Subcontractor will provide Contractor and Owner with a Certificate of
10 insurance before coming onto the job site. Subcontractor will name
Contractor, owner and others as directed by the Contractor and/or owner as
additional insured.

11 The **Certificate Holder** shall be named Haddenn Construction, LLC and ,
12 **6701 Paseo Del Norte Suite E Carlsbad CA 92009.**

13 33. California Secretary of State records show that Haddenn Development, LLC
14 converted to a California corporation named Haddenn Development, Inc. on November 4,
15 2005.

16 34. "Haddenn Construction and Consulting" submitted invoices to the Plaintiffs
17 in 2004 through 2006 for work on the subject residence.

18 35. Upon information and belief, no Haddenn-related entity performed
construction of plaintiffs' home after February 8, 2007.

19 36. San Diego County Recorder records show that on February 26, 2007
20 Haddenn Development, Inc. filed a fictitious business name statement noting that Haddenn
21 Development, Inc. would use the fictitious business name "Haddenn Construction."

22 37. California CSLB records show that, on October 25, 2007, Haddenn
23 Development, Inc. obtained a general contractor's license.

24 38. San Diego County Recorder records show that, on March 4, 2007, Terry
25 Johnson filed a fictitious business name statement noting that Haddenn Development, Inc.
26 would use the fictitious business name "Haddenn Construction."
27

39. On or about May 15, 2007, plaintiffs filed a lawsuit against, among others, Terry Johnson, individually and doing business as Haddenn Construction; Haddenn Development; Haddenn Development, LLC; Haddenn Development, Inc.; Haddenn Construction; Haddenn Construction and Consulting; Maria Johnson, also known as Maria Balasbramanian; and De Novo Legal, LLP ("the Underlying Action").

40. According to state court filings, on or about July 24, 2007, George Rikos of the Coast Law Group entered an appearance, by and through the filing of a demurrer, on behalf of Terry Johnson, Maria Johnson, De Novo Legal, LLP, Haddenn Construction, Haddenn Development, LLC, and Haddenn Development, Inc.

41. According to state court filings, on or about October 4, 2007, Bart Blechschmidt of Galuppo & Blechschmidt substituted as counsel of record for George Rikos, Coast Law Group, on behalf of Terry Johnson, Haddenn Construction, Haddenn Development, LLC, and Haddenn Development, Inc. and Haddenn Consulting.

42. According to state court filings, on or about January 4, 2008, Peter Gregorovic of Fredrickson, Mazeika & Grant, LLP associated in as counsel of record with George Rikos, Coast Law Group, on behalf of Terry Johnson, Haddenn Construction, Haddenn Development, LLC, and Haddenn Development, Inc., Haddenn Consulting, Haddenn Construction and Consulting, and Maria Johnson.

43. According to state court filings, on or about January 24, 2008, Peter Gregorovic of Fredrickson, Mazeika & Grant, LLP substituted as counsel of record for Bart Blechschmidt of Galuppo & Blechschmidt on behalf of Terry Johnson, Haddenn Construction, and Haddenn Development, LLC.

44. According to state court filings, on or about April 2, 2008, Matthew Butler of Nicholas & Butler substituted as counsel of record for Bart Blechschmidt of Galuppo & Blechschmidt on behalf of Terry Johnson, an individual and doing business as Haddenn Construction, Haddenn Development, Haddenn Development, LLC, Haddenn

1 Development, Inc., Haddenn Consulting, Haddenn Construction and Consulting, and
2 Maria Johnson also known as Maria Blasubramanian.

3 45. Upon information and belief, First Specialty accepted the defense of Terry
4 Johnson, individually, Maria Johnson, individually, Terry Johnson dba Haddenn
5 Construction, and Haddenn Development, Inc. dba Haddenn Construction, and First
6 Specialty provided a defense to Terry Johnson, individually, Maria Johnson, individually,
7 Terry Johnson dba Haddenn Construction, and Haddenn Development, Inc. dba Haddenn
8 Construction relating to the Underlying Action.

9 46. Upon information and belief, Underwriters accepted the defense of one of
10 the Haddenn-related entities, and Underwriters provided a defense to one of the Haddenn-
11 related entities relating to the Underlying Action.

12 47. Despite the defense provided by First Specialty and Underwriters, the
13 Underlying Action proceeded to an uncontested bench trial, and judgment was entered
14 against Terry Johnson; Maria Johnson; Haddenn Construction; Haddenn Development;
15 Haddenn Development, LLC; Haddenn Development, Inc.; Haddenn Consulting; and
16 Haddenn Construction and Consulting in the amount of \$9,700,770.75.

THE GEMINI POLICIES

18 48. Gemini provided general liability insurance to Fred Gonzales Concrete, Inc.
19 ("Gonzales") pursuant to Policy Nos. VCGP008833 (effective from May 11, 2004 to May
20 11, 2005) and VCGP010843 (effective from May 11, 2005 to May 11, 2006) (hereinafter,
21 the "Gemini Policies").

22 49. The Gemini Policies provide Gonzales with general liability coverage
23 pursuant to Commercial General Liability Coverage Form CG 00 01 07 98, which states in
24 relevant part that Gemini will pay those sums that an insured becomes legally obligated to
25 pay as damages because of "property damage" caused by an "occurrence," provided that
26 the "property damage" occurs during the Gemini Policies.

27 50. The Gemini Policies define "property damage" as follows:

- 28 a. Physical injury to tangible property, including all

1 resulting loss of use of that property. All such loss of use shall
2 be deemed to occur at the time of the physical injury that
3 caused it; or

4 b. Loss of use of tangible property that is not physically
injured. All such loss of use shall be deemed to occur at the
time of the "occurrence" that caused it."

5 51. The Gemini Policies define "occurrence" as "an accident, including
6 continuous or repeated exposure to substantially the same general harmful conditions."

7 52. The Gemini Policies include a blanket additional insured endorsement which
8 provides as follows:

9 Who is An Insured is amended to include as an insured any
10 person or organization for whom you are performing
operations when you and such person or organization have
11 agreed in writing in a contract or agreement that such person or
organization be added as an additional insured on your policy.
Such person or organization is an additional insured but only
12 with respect to liability caused by your ongoing operations
performed for that insured. A person's or organization's status
13 as an insured under this endorsement ends when your
operations for that insured are completed. This insurance does
not apply to liability caused by the sole negligence of any
14 additional insured.

15 **THE AMERICAN SAFETY POLICIES**

16 53. Gemini is informed and believes, and based thereon alleges, that American
Safety issued one or more insurance policies that provide general liability coverage to
17 Terry V. Johnson dba Haddenn Construction, including, but not limited to, Policy Nos.
18 ESL010558-05-01 (effective from August 19, 2005 to August 19, 2006) and ESL010558-
19 06-02 (effective from August 19, 2006 to August 19, 2007) (hereinafter, the "American
Safety Policies").

20 54. Gemini is informed and believes, and based thereon alleges, that the
American Safety Policies agree to pay those sums that an insured becomes legally
21 obligated to pay as damages because of "property damage" caused by an "occurrence,"
provided that the "property damage" occurs during the American Safety Policies.

22 55. Gemini is informed and believes, and based thereon alleges, that the
American Safety Policies include the same or a substantially similar definition of "property

damage" and "occurrence" as the Gemini Policies.

56. Gemini is informed and believes, and based thereon alleges, that the American Safety Policies include one or more endorsements which confer named insured status on Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related entities for the claims that were at issue in the Underlying Action.

57. Gemini is informed and believes, and based thereon alleges, that the coverage provided to Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related entities as a named insured under the American Safety Policies is primary coverage and therefore American Safety had a duty to respond to the Underlying Action before the Gemini Policies.

THE LEXINGTON POLICIES

58. Gemini is informed and believes, and based thereon alleges, that Lexington issued one or more insurance policies that provide general liability coverage to named insured Gonzales, including, but not limited to, Policy No. 7504028 (effective from May 11, 2006 to May 11, 2007). Gemini is informed and believes, and based thereon alleges, that Lexington issued one or more insurance policies that provide general liability coverage to named insured Addison Sheet Metal, Inc., including, but not limited to, Policy Nos. 001142493 (effective from September 1, 2003 to September 1, 2004), 001143671 (effective from September 1, 2004 to September 1, 2005) and 001144874 (effective from September 1, 2005 to September 1, 2006). Gemini is informed and believes, and based thereon alleges, that Lexington issued one or more insurance policies that provide general liability coverage to named insured Advanced Energy Insulation & Sound Control, Inc., including, but not limited to, Policy Nos. 1143675 (effective from August 31, 2004 to August 31, 2005), 1144892 (effective from August 31, 2005 to August 31, 2006), and 7505726 (effective from August 31, 2006 to August 31, 2007). All of the policies identified in this paragraph are hereinafter collectively referred to as the "Lexington Policies."

59. Gemini is informed and believes, and based thereon alleges, that the Lexington Policies agree to pay those sums that an insured becomes legally obligated to pay as damages because of "property damage" caused by an "occurrence," provided that the "property damage" occurs during the Lexington Policies.

60. Gemini is informed and believes, and based thereon alleges, that the Lexington Policies include the same or a substantially similar definition of "property damage" and "occurrence" as the Gemini Policies.

61. Gemini is informed and believes, and based thereon alleges, that the Lexington Policies include one or more endorsements which confer additional insured status on Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related entities for the claims that were at issue in the Underlying Action.

THE NAC POLICIES

62. Gemini is informed and believes, and based thereon alleges, that NAC issued one or more insurance policies that provide general liability coverage to named insured Gregory D. Caso Plumbing, Inc. dba APEX, including, but not limited to, Policy No. PNG000261800 (effective February 4, 2006 to February 4, 2007) (hereinafter, the "NAC Policies").

63. Gemini is informed and believes, and based thereon alleges, that the NAC Policies agree to pay those sums that an insured becomes legally obligated to pay as damages because of "property damage" caused by an "occurrence," provided that the "property damage" occurs during the NAC Policies.

64. Gemini is informed and believes, and based thereon alleges, that the NAC Policies include the same or a substantially similar definition of "property damage" and "occurrence" as the Gemini Policies.

65. Gemini is informed and believes, and based thereon alleges, that the NAC Policies include one or more endorsements which confer additional insured status on Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related entities for the claims

that were at issue in the Underlying Action.

THE FIRST SPECIALTY POLICIES

66. Gemini is informed and believes, and based thereon alleges, that First Specialty issued one or more insurance policies that provide general liability coverage to named insured Gregory D. Caso Plumbing, Inc. dba APEX, including, but not limited to, Policy No. FCP117003668200 (effective from February 4, 2005 to February 4, 2006) (hereinafter, the "First Specialty Policies").

67. Gemini is informed and believes, and based thereon alleges, that the First Specialty Policies agree to pay those sums that an insured becomes legally obligated to pay as damages because of "property damage" caused by an "occurrence," provided that the "property damage" occurs during the First Specialty Policies.

68. Gemini is informed and believes, and based thereon alleges, that the First Specialty Policies include the same or a substantially similar definition of "property damage" and "occurrence" as the Gemini Policies.

69. Gemini is informed and believes, and based thereon alleges, that the First Specialty Policies include one or more endorsements which confer additional insured status on Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related entities for the claims that were at issue in the Underlying Action.

THE BURLINGTON POLICIES

70. Gemini is informed and believes, and based thereon alleges, that Burlington issued one or more insurance policies that provide general liability coverage to named insured Pacific Coast Heating & Air, including, but not limited to, Policy Nos. 157B000635 (effective from August 4, 2004 to August 4, 2005) and 157B001007 (effective from August 4, 2005 to August 4, 2006) (hereinafter, the "Burlington Policies").

71. Gemini is informed and believes, and based thereon alleges, that the Burlington Policies agree to pay those sums that an insured becomes legally obligated to

pay as damages because of "property damage" caused by an "occurrence," provided that the "property damage" occurs during the Burlington Policies.

72. Gemini is informed and believes, and based thereon alleges, that the Burlington Policies include the same or a substantially similar definition of "property damage" and "occurrence" as the Gemini Policies.

73. Gemini is informed and believes, and based thereon alleges, that the Burlington Policies include one or more endorsements which confer additional insured status on Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related entities for the claims that were at issue in the Underlying Action.

THE UNDERWRITERS POLICIES

74. Gemini is informed and believes, and based thereon alleges, that Underwriters issued one or more insurance policies that provide general liability coverage to named insured Pacific Coast Heating & Air. Gemini is informed and believes, and based thereon alleges, that Underwriters issued one or more insurance policies that provide general liability coverage to named insured American Custom Plastering, including, but not limited to, Policy Nos. WUG-005841 (effective from April 20, 2004 to April 20, 2005) and WUG-01163 (effective April 22, 2005 to April 22, 2006). Gemini is informed and believes, and based thereon alleges, that Underwriters issued one or more insurance policies that provide general liability coverage to named insured C.I. Electric. All of the policies identified in this paragraph are hereinafter collectively referred to as the "Underwriters Policies."

75. Gemini is informed and believes, and based thereon alleges, that the Underwriters Policies agree to pay those sums that an insured becomes legally obligated to pay as damages because of "property damage" caused by an "occurrence," provided that the "property damage" occurs during the Underwriters Policies.

76. Gemini is informed and believes, and based thereon alleges, that the Underwriters Policies include the same or a substantially similar definition of "property

1 damage" and "occurrence" as the Gemini Policies.

2 77. Gemini is informed and believes, and based thereon alleges, that the
3 Underwriters Policies include one or more endorsements which confer additional insured
4 status on Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related
5 entities for the claims that were at issue in the Underlying Action.

THE LINCOLN GENERAL POLICIES

7 78. Gemini is informed and believes, and based thereon alleges, that Lincoln
8 General issued one or more insurance policies that provide general liability coverage to
9 named insured R.E. Enterprises, including, but not limited to, Policy No. T6320031143-00.
10 Gemini is informed and believes, and based thereon alleges, that Lincoln General issued
11 one or more insurance policies that provide general liability coverage to named insured
12 B.G. Finney Finish Carpentry, including, but not limited to, Policy No. 6320000141-01
13 (effective from May 31, 2004 to May 30, 2005). Gemini is informed and believes, and
14 based thereon alleges, that Lincoln General issued one or more insurance policies that
15 provide general liability coverage to named insured Smith Woodworks, including, but not
16 limited to, Policy No. 632002943-00. Gemini is informed and believes, and based thereon
17 alleges, that Lincoln General issued one or more insurance policies that provide general
18 liability coverage to named insured Robert Ratliff Tile & Marble, including, but not
19 limited to, Policy No. 632004081400 (effective from August 16, 2006 to August 16, 2007).
20 All of the policies identified in this paragraph are hereinafter collectively referred to as the
21 "Lincoln General Policies."

22 79. Gemini is informed and believes, and based thereon alleges, that the Lincoln
23 General Policies agree to pay those sums that an insured becomes legally obligated to pay
24 as damages because of "property damage" caused by an "occurrence," provided that the
25 "property damage" occurs during the Lincoln General Policies.

26 80. Gemini is informed and believes, and based thereon alleges, that the Lincoln
27 General Policies include the same or a substantially similar definition of "property

damage" and "occurrence" as the Gemini Policies.

81. Gemini is informed and believes, and based thereon alleges, that the Lincoln General Policies include one or more endorsements which confer additional insured status on Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related entities for the claims that were at issue in the Underlying Action.

THE NAVIGATORS POLICIES

82. Gemini is informed and believes, and based thereon alleges, that Navigators issued one or more insurance policies that provide general liability coverage to named insured Shaun Murphy Landscaping.

83. Gemini is informed and believes, and based thereon alleges, that the
Navigators Policies agree to pay those sums that an insured becomes legally obligated to
pay as damages because of "property damage" caused by an "occurrence," provided that
the "property damage" occurs during the Navigators Policies.

84. Gemini is informed and believes, and based thereon alleges, that the
Navigators Policies include the same or a substantially similar definition of "property
damage" and "occurrence" as the Gemini Policies.

85. Gemini is informed and believes, and based thereon alleges, that the
Navigators Policies include one or more endorsements which confer additional insured
status on Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related
entities for the claims that were at issue in the Underlying Action.

THE SAFECO POLICIES

86. Gemini is informed and believes, and based thereon alleges, that Safeco issued one or more insurance policies that provide general liability coverage to named insured We Do, We Do, Inc., including, but not limited to, Policy Nos. 01-CH-053459-1 (effective from February 13, 2006 to February 13, 2007) and 01-CH053459-2 (effective from February 13, 2007 to February 13, 2008) (hereinafter, the "Safeco Policies").

87. Gemini is informed and believes, and based thereon alleges, that the Safeco Policies agree to pay those sums that an insured becomes legally obligated to pay as damages because of "property damage" caused by an "occurrence," provided that the "property damage" occurs during the Safeco Policies.

88. Gemini is informed and believes, and based thereon alleges, that the Safeco Policies include the same or a substantially similar definition of "property damage" and "occurrence" as the Gemini Policies.

89. Gemini is informed and believes, and based thereon alleges, that the Safeco Policies include one or more endorsements which confer additional insured status on Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related entities for the claims that were at issue in the Underlying Action.

THE UNDERLYING ACTION

90. On or about May 15, 2007, the Plaintiffs initiated the Underlying Action against numerous defendants including, but not limited to, Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related entities alleging construction defects at their residence located at 8213 Run of the Knolls, San Diego, County of San Diego, California.

91. Gemini is informed and believes, and based thereon alleges, that Terry V. Johnson dba Haddenn Construction's defense and indemnity in the Underlying Action was tendered to numerous insurers, including, but not limited to, Third Party Defendants American Safety, Lexington, NAC, First Specialty, Burlington, Underwriters, Lincoln General, Navigators, and Safeco.

92. Gemini is informed and believes, and thereon alleges, that American Safety either ignored or denied the tender of defense and indemnity in the Underlying Action, and that American Safety refused to provide Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related entities with a defense or indemnity in the Underlying Action.

93. Gemini is informed and believes, and thereon alleges, that Lexington either

1 ignored or denied the tender of defense and indemnity in the Underlying Action, and that
2 Lexington refused to provide Terry V. Johnson dba Haddenn Construction and/or other
3 Haddenn-related entities with a defense or indemnity in the Underlying Action.

4 94. Gemini is informed and believes, and thereon alleges, that NAC either
5 ignored or denied the tender of defense and indemnity in the Underlying Action, and that
6 NAC refused to provide Terry V. Johnson dba Haddenn Construction and/or other
7 Haddenn-related entities with a defense or indemnity in the Underlying Action.

8 95. Gemini is informed and believes, and thereon alleges, that Burlington either
9 ignored or denied the tender of defense and indemnity in the Underlying Action, and that
10 Burlington refused to provide Terry V. Johnson dba Haddenn Construction and/or other
11 Haddenn-related entities with a defense or indemnity in the Underlying Action.

12 96. Gemini is informed and believes, and thereon alleges, that Lincoln General
13 either ignored or denied the tender of defense and indemnity in the Underlying Action, and
14 that Lincoln General refused to provide Terry V. Johnson dba Haddenn Construction
15 and/or other Haddenn-related entities with a defense or indemnity in the Underlying
16 Action.

17 97. Gemini is informed and believes, and thereon alleges, that Navigators either
18 ignored or denied the tender of defense and indemnity in the Underlying Action, and that
19 Navigators refused to provide Terry V. Johnson dba Haddenn Construction and/or other
20 Haddenn-related entities with a defense or indemnity in the Underlying Action.

21 98. Gemini is informed and believes, and thereon alleges, that Safeco either
22 ignored or denied the tender of defense and indemnity in the Underlying Action, and that
23 Safeco refused to provide Terry V. Johnson dba Haddenn Construction and/or other
24 Haddenn-related entities with a defense or indemnity in the Underlying Action.

25 99. Gemini is informed and believes, and thereon alleges, that First Specialty
26 initially accepted the tender of defense and indemnity in the Underlying Action, but that
27 First Specialty later withdrew coverage under the First Specialty Policies during the
28

Pendency of the Underlying Action.

100. Gemini is informed and believes, and thereon alleges, that Underwriters initially accepted the tender of defense and indemnity in the Underlying Action, but that Underwriters later withdrew coverage under the Underwriters Policies during the pendency of the Underlying Action.

101. Gemini is informed and believes, and thereon alleges, that Roes 1 through 20 either ignored or denied the tender of defense and indemnity in the Underlying Action, and that Roes 1 through 20 refused to provide a defense or indemnity in the Underlying Action.

FIRST CAUSE OF ACTION

**(Declaratory Relief Regarding Duty to Defend Against Third Party Defendants
American Safety, Lexington, NAC, First Specialty, Burlington, Underwriters, Lincoln
General, Navigators, Safeco, and Roes 1 Through 20)**

102. Gemini re-alleges and incorporates by this reference all preceding paragraphs above, in their entirety, as though fully set forth herein.

103. Gemini is informed and believes, and based thereon alleges, that Third Party Defendants American Safety, Lexington, NAC, First Specialty, Burlington, Underwriters, Lincoln General, Navigators, Safeco, and Roes 1 through 20, and each of them, had a duty to defend Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related entities in the Underlying Action under their policies and well-established California law.

104. Gemini is informed and believes, and based thereon alleges, that Third Party Defendants American Safety, Lexington, NAC, First Specialty, Burlington, Underwriters, Lincoln General, Navigators, Safeco, and Roes 1 through 20, and each of them, denied and continued to deny their duty to defend Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related entities in the Underlying Action despite the obligations owed under their policies and well-established California law.

105. Gemini is informed and believes, and based thereon alleges, that Third Party Defendants American Safety, Lexington, NAC, First Specialty, Burlington, Underwriters,

Lincoln General, Navigators, Safeco, and Roes 1 through 20, and each of them, dispute the contentions as set forth herein.

106. An actual controversy has arisen and now exists between Gemini and Third Party Defendants American Safety, Lexington, NAC, First Specialty, Burlington, Underwriters, Lincoln General, Navigators, Safeco, and Roes 1 Through 20, which requires a judicial determination regarding the duty to defend owed by Third Party Defendants American Safety, Lexington, NAC, First Specialty, Burlington, Underwriters, Lincoln General, Navigators, Safeco, and Roes 1 through 20 to Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related entities in the Underlying Action.

SECOND CAUSE OF ACTION

**(Declaratory Relief Regarding Duty to Indemnify Against Third Party Defendants
American Safety, Lexington, NAC, First Specialty, Burlington, Underwriters, Lincoln
General, Navigators, Safeco, and Roes 1 Through 20)**

107. Gemini re-alleges and incorporates by this reference all preceding paragraphs above, in their entirety, as though fully set forth herein.

108. Gemini is informed and believes, and based thereon alleges, that Third Party Defendants American Safety, Lexington, NAC, First Specialty, Burlington, Underwriters, Lincoln General, Navigators, Safeco, and Roes 1 through 20, and each of them, had a duty to indemnify Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related entities in the Underlying Action under their policies and well-established California law.

109. Gemini is informed and believes, and based thereon alleges, that Third Party Defendants American Safety, Lexington, NAC, First Specialty, Burlington, Underwriters, Lincoln General, Navigators, Safeco, and Roes 1 through 20, and each of them, denied and continued to deny their duty to indemnify Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related entities in the Underlying Action despite the obligations owed under their policies and well-established California law.

110. Gemini is informed and believes, and based thereon alleges, that Third Party Defendants American Safety, Lexington, NAC, First Specialty, Burlington, Underwriters, Lincoln General, Navigators, Safeco, and Roes 1 through 20, and each of them, dispute the contentions as set forth herein.

111. An actual controversy has arisen and now exists between Gemini and Third Party Defendants American Safety, Lexington, NAC, First Specialty, Burlington, Underwriters, Lincoln General, Navigators, Safeco, and Roes 1 through 20, which requires a judicial determination regarding the duty to indemnify owed by the Third Party Defendants to Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related entities in the Underlying Action.

THIRD CAUSE OF ACTION

(Equitable Contribution Regarding Defense Expenses Against All Third Party Defendants)

112. Gemini re-alleges and incorporates by this reference all preceding paragraphs above, in their entirety, as though fully set forth herein.

113. Gemini is informed and believes, and based thereon alleges, that the Third Party Defendants are obligated to defend Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related entities in connection with the Underlying Action, such that the defense obligations owed to Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related entities in connection with the Underlying Action should be borne by each based upon an equitable allocation.

114. Gemini is informed and believes, and based thereon alleges, that Third Party Defendants failed and refused, and continue to fail and refuse, to contribute to their fair share of the defense incurred, continuing to be incurred, and/or to be incurred in the future, on behalf of Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related entities in the Underlying Action.

115. Gemini is informed and believes, and based thereon alleges, that Third Party

1 Defendants should be required to reimburse Gemini for their fair share of the defense that
 2 may be incurred by Gemini in the future, relative to claims alleged against Terry V.
 3 Johnson dba Haddenn Construction and/or other Haddenn-related entities in the
 4 Underlying Action, including interest.

5 **FOURTH CAUSE OF ACTION**

6 **(Equitable Contribution Regarding Indemnity Against All Third Party Defendants)**

7 116. Gemini re-alleges and incorporates by this reference all preceding paragraphs
 8 above, in their entirety, as though fully set forth herein.

9 117. Gemini is informed and believes, and based thereon alleges, that the Third
 10 Party Defendants are obligated to indemnify Terry V. Johnson dba Haddenn Construction
 11 and/or other Haddenn-related entities in connection with the Underlying Action, such that
 12 the indemnity obligations owed to Terry V. Johnson dba Haddenn Construction and/or
 13 other Haddenn-related entities in connection with the Underlying Action should be borne
 14 by each based upon an equitable allocation.

15 118. Gemini is informed and believes, and based thereon alleges, that Third Party
 16 Defendants failed and refused, and continue to fail and refuse, to contribute for their fair
 17 share of the indemnity incurred, continuing to be incurred, and/or to be incurred in the
 18 future, on behalf of Terry V. Johnson dba Haddenn Construction and/or other Haddenn-
 19 related entities in the Underlying Action.

20 119. Gemini is informed and believes, and based thereon alleges, that Third Party
 21 Defendants should be required to contribute for their fair share of the indemnity incurred,
 22 continuing to be incurred, and/or that may be incurred in the future by Gemini, on behalf
 23 of Terry V. Johnson dba Haddenn Construction and/or other Haddenn-related entities in
 24 the Underlying Action, including interest.

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27 ////

FIFTH CAUSE OF ACTION

**(Declaratory Relief Against Third Party Defendants Haddenn Construction,
Haddenn Construction, LLC, Haddenn Development, Haddenn Development, Inc.,
Haddenn Consulting, Haddenn Construction and Consulting, and Haddenn
Development, LLC)**

120. Gemini re-alleges and incorporates by this reference all preceding paragraphs above, in their entirety, as though fully set forth herein.

121. As against Haddenn Construction, Haddenn Construction, LLC, Haddenn Development, Haddenn Development, Inc., Haddenn Consulting, Haddenn Construction and Consulting, and Haddenn Development, LLC, an actual, present, and justiciable controversy has arisen and now exists between Gemini on the one hand and Haddenn Construction, Haddenn Construction, LLC, Haddenn Development, Haddenn Development, Inc., Haddenn Consulting, Haddenn Construction and Consulting, and Haddenn Development, LLC on the other, concerning the rights, duties, and obligations under the Gemini Policies issued.

122. Gemini contends that, pursuant to Gemini Policies, notwithstanding any other limitations and exclusions contained within the Gemini Policies, the primary responsibility for Terry V. Johnson dba Haddenn Construction's entire defense and indemnity does not shift to Gemini.

123. Gemini further contends that there is no potential coverage available for Terry V. Johnson dba Haddenn Construction under the Gemini Policies with regard to the Underlying Action.

124. Gemini alleges that a declaratory judgment is both proper and necessary, so that the respective rights, duties, and obligations of between Gemini on the one hand and Haddenn Construction, Haddenn Construction, LLC, Haddenn Development, Haddenn Development, Inc., Haddenn Consulting, Haddenn Construction and Consulting, and Haddenn Development, LLC on the other under the provisions of the Gemini Policies may

1 be determined.

2
PRAYER FOR RELIEF

3 WHEREFORE, Gemini prays for judgment against the Third Party Defendants as
4 follows:

5 1. On the First Cause of Action, for a declaration that the Third Party
6 Defendants had, and continue to have, a duty to defend Terry V. Johnson dba Haddenn
7 Construction and/or other Haddenn-related entities in the Underlying Action.

8 2. On the Second Cause of Action, for a declaration that the Third Party
9 Defendants had, and continue to have, a duty to indemnify Terry V. Johnson dba Haddenn
10 Construction and/or other Haddenn-related entities in the Underlying Action.

11 3. On the Third Cause of Action, for a proportionate share of the amounts
12 expended, or to be expended by Gemini, in the defense of Terry V. Johnson dba Haddenn
13 Construction and/or other Haddenn-related entities in the Underlying Action, plus interest.

14 4. On the Fourth Cause of Action, for a proportionate share of the amounts
15 expended, or to be expended by Gemini, to indemnify Terry V. Johnson dba Haddenn
16 Construction and/or other Haddenn-related entities in the Underlying Action, plus interest.

17 5. On the Fifth Cause of Action, for a declaration that that there is no potential
18 coverage available for Terry V. Johnson dba Haddenn Construction and/or other Haddenn-
19 related entities under the Gemini Policies with regard to the Underlying Action.

20 6. For costs of suit incurred herein.

21 7. For such other relief as the Court deems proper.

22 DATED: May ___, 2014

SELMAN BREITMAN LLP

24 By: s/ Todd R. Haas

25 SHERYL W. LEICHENGER
TODD R. HAAS
MELANIE M. SMITH
26 Attorneys for Defendant/Third Party Plaintiff
GEMINI INSURANCE COMPANY

CERTIFICATE OF SERVICE

I, Todd R. Haas, hereby certify that on May ___, 2014, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorneys of record that the documents have been filed and are available for viewing and downloading. Those who have not yet registered for service via CM/ECF will be served by other means.

DATED: May , 2014 SELMAN BREITMAN LLP

By: s/ Todd R. Haas
TODD R. HAAS
Attorneys for Defendant
GEMINI INSURANCE COMPANY

Selman Breitman LLP
ATTORNEYS AT LAW